

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 12-CV-00482-LH-KBM
No. 07-CR-00701-MCA-KBM

JESUS MANUEL DIAZ,

Defendant.

ORDER

THIS MATTER is before the Court on Defendant Jesus Manuel Diaz's judicial notifications, which were filed pro se on February 21, 2017. [CV Docs. 62, 63] In his judicial notifications, Defendant appears to allege that he was deprived of medical care during his incarceration, in violation of his right to be free from cruel and unusual punishment. [CV Docs. 62, 63] Defendant's claims regarding the alleged deprivation of medical care are not cognizable in a federal habeas corpus proceeding and must be pursued via a civil rights action under 42 U.S.C. § 1983 or *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). *See Nelson v. Campbell*, 541 U.S. 637, 643 (2004) (noting that "constitutional claims that merely challenge the conditions of a prisoner's confinement, whether the inmate seeks monetary or injunctive relief, fall outside of that core [of habeas corpus] and may be brought pursuant to § 1983 in the first instance"); *United States v. Sisneros*, 599 F.2d 946, 947 (10th Cir. 1979) (noting that "medical mistreatment claim[s] . . . [are] not cognizable in a federal

habeas corpus proceeding”) (per curiam). Therefore, the Court will recharacterize Defendant’s pro se judicial notifications as a civil rights complaint pursuant to 42 U.S.C. § 1983 and *Bivens* and direct the Clerk of the Court to open a new civil case. *See Castro v. United States*, 540 U.S. 375, 381 (2003) (“Federal courts sometimes will ignore the legal label that a pro se litigant attaches to a motion and recharacterize the motion to place it within a different legal category.”).

IT IS THEREFORE ORDERED that Defendant’s judicial notifications [CV Docs. 62, 63] are RECHARACTERIZED as a civil rights complaint pursuant to 42 U.S.C. § 1983 and *Bivens*;

IT IS FURTHER ORDERED that the Clerk of the Court is directed to open a new civil case for Defendant’s recharacterized civil rights complaint [CV Docs. 62, 63].


UNITED STATES CHIEF MAGISTRATE JUDGE